



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.64 OF 2024

Subhash Ramrao Jadhav,
age 75 years, Occ. Retired,
R/o Opposite Datiwala Petrol Pump,
Vinayak Nagar, Nanded self and through
GPA Applicant no2 to 13
and others.

Applicants
(orig.Defendants.)

Versus

Vaijnath Venkatrao Jadhav,
age 60 yrs, Occ. Agriculture,
R/o. Vinayak Nagar, Nanded,
President of Venkatrao Patil Gramin
Vikas and Education Sanstha, Dongargaon,
Tq. Loha, District Nanded.

Respondents.
(orig. plaintiff)

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Advocate for Applicants : Mr. S.V Natu

Advocate for respondent: Mr. P. R. Katneshwarkar Senior
Advocate i/b Mr. P. B. Gapat.

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CORAM : S. G. CHAPALGAONKAR, J.

Reserved on : May 08, 2025.

Pronounced on : June 09, 2025.

FINAL ORDER :-

1. The applicants/original defendants impugn the order dated 2.4.2024 passed by Civil Judge Senior Division, Nanded, below Application Exhibit-47, in Special Civil Suit No.146 of 2023, whereby the applicant's prayer for rejection of

plaint has been declined. (Parties hereinafter are referred to as per their original status in the suit).

2. Brief facts, required to be noticed for present adjudication may be recapitulated as under :-

a. Respondent instituted Special Civil Suit No.146 of 2023 before the Civil Judge Senior Division, at Nanded seeking relief of specific performance of agreement to sale and perpetual injunction against defendants. It is contention of plaintiff that defendants are owners of land to the extent of 36 Gunthas, bearing CTS No.10908 to 10910, 10912 and 10914, survey no.74 at Vinayak Nagar, Nanded. On 10.3.2014 they got sanctioned lay out plan from Municipal Corporation. Plaintiff, who is a president of a Trust and Educational Institution, was intending to purchase the land for construction of school. Defendant nos.1 to 3 offered to sell plot nos.16 to 28, having 30,000/- sq. feet area out of sanctioned layout. They received Rs.25.00 Lakh out of settled consideration of Rs.2 crore, by way of earnest amount from plaintiff and on 16.04.2015, delivered possession. Thereafter, plaintiff constructed 26 rooms. Since last 7 to 8 years plaintiff is running primary school at the suit property. However, on

completion of construction, one Ayubuddin Jahagirdar brought to the notice of plaintiff an order passed by Court in Regular Civil Suit No.1007 of 1989, which directs parties to maintain status-quo as to possession of land survey no.74 including the suit property. When plaintiff inquired with defendants as to litigation and order, they responded that sale-deed can be executed after final adjudication of the RCS No.1007 of 1989.

3. According to plaintiff, defendants have admitted his possession in Court proceeding as well as in their correspondence with him. Plaintiff shown his readiness to pay balance consideration subject to execution of receipt or by way of bank transaction, but defendants denied the same. Plaintiff published newspaper proclamation dated 2.6.2021 and asserted his possession over the suit property. Defendants replied the same through proclamation dated 4.6.2021. Further, defendants were intending to settle dispute with Ayubuddin and transfer suit land to third parties i.e. political leaders.

4. On 7.6.2021 defendants entered into suit property, raised quarrel and gave threats to alienate or transfer suit property without consent of plaintiff. Plaintiff was

apprehended of illegal dispossession through intervention of political leaders. It is further contention of plaintiff that he requested defendants to execute registered sale-deed by accepting balance of consideration. Defendants in their written statement in R.C.S. no.265 of 2021 instituted by plaintiff seeking relief of perpetual injunction denied existence of oral agreement to sale in favour of plaintiff and filed counter-claim seeking relief of perpetual injunction against him. Hence, cause of action arose to file suit for the reliefs, as claimed.

5. Defendants appeared and filed application Exhibit-47, seeking rejection of plaint under order VII Rule 11 of CPC contending that plaintiff had previously instituted R.C.S. No.265 of 2021 claiming relief of perpetual injunction on the basis of alleged agreement to sell. In that suit plaintiff omitted to seek relief of specific performance of contract. Eventually, accepting objection of defendant as to maintainability, plaint in that suit has been rejected.

6. Plaintiff has filed appeal assailing order of rejection of plaint in R.C.S. No.265 of 2021 and simultaneously filed present suit seeking decree of specific performance of

contract on the basis of same cause of action. As such, present suit is barred by Order II Rule 2 of the Civil Procedure Code (for short CPC). Similarly, present suit is barred by limitation, plaint is liable to be rejected. Trial Court declined to entertain aforesaid application, firstly on the ground that question of limitation is a mixed question of fact and law. Secondly, the bar under Order II Rule 2 cannot be invoked, since certified copy of plaint in previous suit i.e. RCS no.265 of 2021 filed by defendant is not admitted in evidence. Similarly, the bar under Order II Rule 2 of Civil Procedure Code is a mixed question of fact and law which requires decision on detailed scrutiny of pleadings and evidence. Learned Trial Court also observed that except pleadings of plaint in present suit, no other document can be looked into while entertaining the application under Order VII Rule 11 of the Civil Procedure Code. Learned Judge of the Trial Court relied upon observations of the Supreme Court of India in case of **Gurubux Singh Vs. Bhooralal** reported in **AIR 1964 SC 1810** that plea of Order II Rule 2 of CPC is a *‘technical bar and cannot be decided on the basis of inferential reason and same can be established only if defendants files any evidence, the pleadings in previous suit and proves identity of the cause of action in the two suits’*.

7. Mr. Natu, learned advocate appearing for applicant submits that plaintiff in earlier suit choose to proceed without seeking relief of specific performance; as such, relinquished his claim. He would urge that pleadings in paragraph nos.20 and 22 in previous suit i.e. RCS No.265 of 2021 and paragraph nos.20 and 22 in the present suit is identical and depicts that plaintiff had cause of action to seek the relief of specific performance of contract at the time of instituting earlier suit itself. However, he restricted his claim for relief of perpetual injunction and omitted relief of specific performance. Eventually, plaint in RCS No.265 of 2021 has been rejected by court under Order VII Rule 11 of the CPC which amounts to decree. Plaintiff failed to avail the option of seeking amendment or withdraw the suit with liberty to file afresh. According to Mr. Natu, Order VII Rule 13 would not apply in the present case as relinquishment of relief is absolute and cannot be rectified and treated as curable defect. According to Mr. Natu, both the suits are in respect of the same cause of action and plaintiff, without obtaining leave from the Court, omitted to sue for the relief for which second suit has been filed. In support of his contentions, he relies upon observations of the Supreme Court of India in case of I. **Virgo**

Industries (Eng). Pvt Ltd., Vs. Venturetech Solutions Private Limited reported in (2013) 1 SCC 625, Gurubux Singh Vs. Bhooralal reported in AIR 1964 SC 1810, Swastik Complex Pvt Ltd., Vs. Prafulla (Dr) s/o Jageshwar Mukaddam and others reported in 2009 (1) Mh.L.J. 757.

8. Per contra, Mr. Katneshwarkar, learned senior advocate appearing for respondent/plaintiff justifies the impugned order. He would submit that, during pendency of this revision application, R.C.A. No.68 of 2023 that was filed assailing order dated 13.6.2023 regarding rejection of plaint in R.C.S. No.265 of 2021 has been withdrawn. Certified copy of the order passed below purshis Exhibit-39 and alongwith order dated 17.2.2025 on Exhibit-1 is filed on record.

9. Mr. Katneshwarkar would submit that the bar under Order II Rule 2 being technical in nature has to be established in trial. According to him, in light of the order VII Rule 13 of the Civil Procedure Code, rejection of plaint in earlier suit would not bar institution of present suit. Contents of plaint in present suit and documents annexed to are only relevant for adjudication of objection under Order VII Rule 11 of the CPC. Defendants cannot rely upon defence set up in

written statement or application filed by them under Order VII Rule 11 of the CPC or any document tendered in support of such defence. According to Mr. Katneshwarkar, cause of action for filing earlier suit was altogether different. However, when defendant denied agreement to sell in his written statement filed in earlier suit, cause of action arose to institute present suit seeking relief of specific performance hence, both the suits have distinct cause of action. The plea of bar under Order II Rule 2 of the CPC cannot be examined at this pre-mature stage. Mr. Katneshwarkar, would further invite attention of this Court to paragraph no.25 of the plaint in RCS No.265 of 2021, whereby plaintiff had reserved his right to add the relief of specific performance as and when required, while instituting previous suit claiming limited relief for grant of perpetual injunction against defendants.

10. In support of his contentions, Mr. Katneshwarkar, relies on observations of the Supreme Court in case of **Cuddalore Powergen Corporation Vs. M/s Chemplast Cuddalore Vinyls Limited and Anr. reported in 2025 INSC 73.**

11. Having considered the submissions advanced, apparently controversy posed in present civil revision

application is as to, whether present suit is barred under Order II Rule 2 of the CPC, if yes, whether plaint is liable to be rejected under Order VII Rule 11 of the CPC in the facts of the case.

Undisputed factual matrix can be culled out as under :-

- i. Plaintiff asserts his possession over suit property on the basis of oral agreement to sell entered between parties in the year 2002 for consideration of Rs.2 Crore.
- ii. Previously plaintiff instituted RCS No.265 of 2021 claiming relief of perpetual injunction against defendants asserting that defendants in collusion with Mr. Ayubuddin and local political leaders were disturbing his possession. When plaintiff requested defendants to not to do such illegal acts and shown his readiness to pay balance consideration as per terms of agreement, defendants threatened to alienate suit property without his consent. On such, cause of action plaintiff sought limited relief, reserving his right to seek relief of specific performance.
- iii. The defendants denied execution of oral agreement. They filed an application Exhibit-154 seeking rejection of plaint on the ground of omission to claim relief of specific performance.

Trial Court entertained said application and rejected plaint vide order dated 13.6.2023.

- iv. Plaintiff filed RCA No.68 of 2023 before District Judge assailing order of rejection of plaint. However during pendency of this revision application, appeal has been disposed off as withdrawn. Thus, order of rejection of paint dated 13.6.2023, passed in RCS No.265 of 2021 has attained finality.
- v. On 13.7.2023, plaintiff instituted present suit i. e. Special Civil Suit No.146 of 2023 claiming the relief of specific performance of oral agreement to sale and perpetual injunction against defendants, contending that in RCS No.265 of 2021, defendants filed written statement dated 5.8.2021 and denied oral agreement to sale of the suit property, further raised counter-claim dated 9.2.2023, hence cause of action arose for filing present suit.
- vi. Defendants filed application Exhibit-47 seeking rejection of plaint in Special Civil Suit No.146 of 2023 under Order VII Rule 11 of the CPC adverting bar under Order II Rule 2 of the CPC, as cause of action to seek relief of specific performance was available at the time of institution of previous suit, claim has been omitted. Hence, present suit is barred.

12. Before proceeding to consider rival contentions, it is apposite to refer to provisions of Order II Rule 2 of the Civil Procedure Code, which reads thus :-

ORDER II Rule 2- Suit to include the whole claim —

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish and portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim -

Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs —

A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation.

For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.”

13. Plain reading of the aforesaid provision depicts that plaintiff is required to include whole of the claim in respect of any particular cause of action. The plaintiff is also entitled to relinquish any portion of his claim, however, once

he relinquished or omit to sue any portion of his claim, he loses his right in respect of the portion so omitted or relinquished. Sub-clause (3) of Order II deals with the contingency where a plaintiff is entitled for more than one relief in respect of same cause of action. In such case, if he omits without leave of the Court to sue for any such relief, he is not entitled to raise claim afterwards. The corollary of aforesaid provision shows that Order II Rule 2 contemplates two different situations where plaintiff omits or relinquishes a part of claim which he is entitled to make and secondly, whether plaintiff omits or relinquishes one out of several reliefs that he could have claimed in the suit. It is, therefore, evident that where plaintiff omits or relinquishes one of the several reliefs that could have been claimed in the suit, he can file subsequent suit seeking relief omitted, only if, he had obtained leave of the Court in the first suit. It is well settled that the object behind enactment of Order II Rule (2)&(3) is to discourage/prohibit vexing the defendant again and again by multiple suits. In case of Gurubux Singh Vs. Bhooralal (Supra) the Supreme Court observed as under :-

“6. In order that a plea of a bar under Order 2 Rule 2(3) of the Civil Procedure Code should succeed, the defendant who raises the plea must make out (1) that the second suit was in respect of the same cause of

action as that on which the previous suit was based, (2) that in respect of that cause of action the plaintiff was entitled to more than one relief, (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the Court, omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the later suit is based there would be no scope for the application of the bar.”

14. In light of the aforesaid exposition of law, to apply the bar under Order II Rule 2 of the CPC, the cause of action in the later suit must be the same as in the earlier suit. Therefore, it is necessary to find out similarity of cause of action in both the suits instituted by plaintiff.

15. Admittedly, in plaint of present suit, plaintiff has made reference of his previous suit i.e. RCS No.265 of 2021 seeking relief of perpetual injunction. After contending that the defendant has entered into oral agreement to sell in respect of the suit plots, plaintiff in paragraph no.20 made following stipulation :-

“20. That, the plaintiff came to know the defendants and their adversary Ayubuddin with ill-intention intending to compromise the proceeding and they jointly are transferring the area 5 Acre 36 Gunthas owned by the defendants to third party i.e. in favour of Political Leaders including the suit area which is agreed to sale to the plaintiff as mentioned in claim clause no.1. The defendants by joining hands with powerful

local leaders intending to dispossess the plaintiff from the suit property by using force and illegal method. Accordingly, the defendants given threats to the plaintiff for taking forcible possession by removing the structure and name board of the school from the suit property. The plaintiff avoiding further complication and multiplicity of litigation as well as for protecting the right to purchase of the suit property filed this suit and claimed relief of injunction.

16. Similarly, in paragraph no.22, plaintiff further pleaded as under :-

“22. That, the defendants by joining hands with his family members and persons unnecessary causing obstruction to the plaintiff and employees of the school, they are also intending to dispose off their property including the suit property which is in possession of the plaintiff with ill-intention. The defendants on 7.6.2021 by entering in suit property made quarrel, they caused obstruction to the plaintiff and employees of the school of plaintiff by giving threats of dispossession by using force and illegal method, the defendants also given threats to alienate or transfer their owned property including the suit property without informing or obtaining consent of the plaintiff. The plaintiff requested them not to do such illegal acts and shown readiness to purchase the suit property as per terms of agreement for sale. The plaintiff then field RCS No.265 of 2021 before this Honourable Court for the relief of perpetual injunction, in the said suit Honourable 2nd Jt. Civil Judge Senior Division Nanded passed order for rejection of plaint, against the said order the plaintiff preferred RCA No.68 of 2023 before Honourable District Judge, Nanded in which the defendants appeared, the said appeal is pending.”

17. Plaintiff has further asserted in paragraph no.24 that defendants in written statement Exhibit 61 filed in RCS No.265 of 2021 dated 5.8.2021 in paragraph nos.4 and 5

denied execution of registered sale deed of suit property in favour of plaintiff. The defendants in RCS no.265 of 2021 filed counter-claim for relief of perpetual injunction against the plaintiff and denied agreement to sell. As such, cause of action arose to file present suit.

18. Analysis of the aforesaid pleadings in plaint clearly depicts that even before institution of previous suit i.e. RCS no.265 of 2021, defendants have obstructed plaintiff's possession and gave threat to alienate or transfer suit property without obtaining consent of the plaintiff. The aforesaid averments are clear indication that defendants have refuted plaintiff's claim over suit property and were at the verge of creating third party interest ignoring alleged agreement with plaintiff. Plaintiff was well aware about denial of his claim over the suit property by defendants. Therefore, there was clear cause of action to claim relief for specific performance of contract. However, plaintiff omitted to raise such claim and restricted claim in previous suit for perpetual injunction against the defendants. Admittedly, present suit is filed when plaintiff was still pursuing his claim in RCS No.265 of 2021 in R.C.A. No.68 of 2023 before Appellate Court assailing order of

rejection of plaint. Therefore, there is no room of doubt that as per pleadings and chronology of events stipulated in present suit, plaintiff had cause of action to claim for relief of specific performance of contract before institution of previous suit. The foundation made out at the time of institution of previous suit seeking relief of permanent injunction was complete cause of action for plaintiff to seek relief of specific performance, yet plaintiff omitted to claim such relief. Although, plaintiff avers that written statement or counter-claim filed in previous suit in the nature of denial of agreement to sell is the cause of action to institute the present suit, such contention cannot be countenanced. The specific averments in para No 20,22 and 24 of plaint in present suit that on 7.6.2021, defendants entered into property, gave threat of dispossession and alienate the suit property in favour of third party without consent of plaintiff, itself made out cause of action before institution of RCS No. 265/2021 to seek relief for the specific performance.

19. Mr. Katneshwarkar, learned senior advocate appearing for respondent/plaintiff contends that copy of plaint in previous suit i.e. RCS No.265 of 2021 was not filed alongwith the plaint. Defendant filed its certified copy

alongwith their application to setup defence, hence, no reference can be made to it at this stage. So, the issue as to similarity or identity of causes of action between two suits cannot be decided by mere inference. According to him, parties must be left to the trial so as to ascertain the aforesaid facts.

20. It is true that Constitution Bench in case of Gurubux Singh (Supra) refused to entertain bar of Order II Rule 2 of the Civil Procedure Code in absence of pleadings in earlier suit on the record. However, in the present case, plaintiff's own pleadings clearly reiterates averments taken in previous suit. Therefore, even without referring to plaint in RCS No.265 of 2021, from pleadings of the present suit, it can be conclusively gathered that plaintiff had cause of action to raise claim for specific performance while instituting RCS no.265 of 2021, which he omitted without leave of court.

21. Although, it is trite that averments in the plaint and documents annexed thereto has to be basis for rejection of plaint under Order 7 Rule 11 of the CPC, in the present case, certified copy of plaint in previous suit is filed by the defendants. It can be observed that, except addition of some

paragraphs, pleadings in previous suit and present suit are identical. The pleadings constituting cause of action for previous suit is reproduced in plaint in present suit with certain addition. Therefore, even without reference to the certified copy of plaint in previous suit, this Court has no difficulty to hold that plaintiff had cause of action claim relief of specific performance at the time of institution of previous suit, which he has omitted. Hence, bar under Order II Rule 2 of the CPC would apply in the facts of the present case.

22. Next contention raised on behalf of the respondent/plaintiff is that, in previous suit, plaint has been rejected under Order VII Rule 11 on the ground that suit simplicitor for perpetual injunction is not maintainable without claiming relief of specific performance of contract. Therefore, in view of the Rule 13 of Order VII plaintiff is not precluded from presentation of fresh plaint in respect of same cause of action. However, it is difficult to accede with aforesaid contention. Order VII Rule 13 would not come to rescue of plaintiff. It was for the plaintiff to obtain leave from the Court to raise claim for specific performance of contract on same cause of action when he restricted claim in previous suit only

for relief of Perpetual injunction. Admittedly, plaintiff failed to obtain leave as contemplated under Order II Rule 3 of the CPC for relief, omitted while institution of the previous suit. In absence of such leave, bar under Order II Rule 2 would apply. In that view of the matter, plaintiff cannot seek to rely upon order 7 Rule 13 of CPC and institute fresh suit based on the same cause of action. Order VII Rule 13 would not undo or upset bar under Order II Rule 2 of the CPC which would operate as bar upon plaintiff to seek relief in subsequent suit upon same cause of action. In the present case, when plaintiff has omitted to raise the claim for specific performance of contract in previous suit and failed to obtain leave of the Court for raising such a claim in subsequent suit, the bar of section 12 of the CPC would apply and he shall not be entitled to institute a suit in respect of same cause of action in any Court to which the Code applies.

23. In the present case, plaint in previous suit is rejected. The decree has attained finality. Considering similarity of cause of action in both the suits, present suit is clearly barred by operation of Order II Rule 2 of the CPC. In the result, the impugned order cannot be sustained in law.

Trial Court ought to have allowed the application Exhibit-47 and rejected the plaint. In the result, following order is passed.

O R D E R

- i. Civil Revision application is **allowed**.
- ii. The impugned order dated 2.4.2024 passed by the Civil Judge, Senior Division, Nanded below Exhibit 47 in Special Civil Suit No.146 of 2023 is quashed and set aside and the application below Exhibit 47 is **allowed**.
- iii. The plaint in Special Civil Suit No.146 of 2023 is rejected.
- iv. Decree be drawn up accordingly.
- v. Civil Revision Application stands disposed of. Pending Civil application, if any, also stands disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

aaa- (final)

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